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**BY HAND DELIVERY**

Ms. Magalie R. Salas, Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

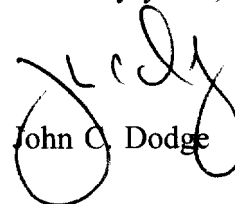
**Re: CC Docket No. 98-11**

Dear Ms. Salas:

Enclosed for filing in the above-referenced docket please find an original and four (4) copies of the Comments of FiberNet, L.L.C. Kindly date-stamp as received the included return copy.

Any questions regarding this matter may be directed to the undersigned.

Sincerely yours,

  
John C. Dodge

Enclosures

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not to be filed  
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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

**RECEIVED**

AUG 10 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Petition of Bell Atlantic for Relief from Barriers  
to Deployment of Advanced  
Telecommunications Services

Emergency Petition of Bell Atlantic — West  
Virginia for Interim Relief

CC Docket No. 98-11

**COMMENTS OF FIBERNET, L.L.C.**

**INTRODUCTION**

Pursuant to the Public Notice in this matter, FiberNet, L.L.C. ("FiberNet")<sup>1</sup> respectfully files its initial comments in response to the "Emergency Petition of Bell Atlantic — West Virginia For Interim Relief."<sup>2</sup> Bell Atlantic seeks authority to construct interLATA facilities and provide interLATA services between the Clarksburg and Charleston LATAs within West Virginia through waiver of Section 271 (based on Section 706 of the Telecommunications Act of 1996) or by a LATA boundary modification to accommodate these services. The Commission should deny Bell Atlantic's Petition, because the facts upon which Bell Atlantic would have the Commission rely are inaccurate, and therefore insufficient to support the requested grant for emergency relief.

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<sup>1</sup> Fibernet was certified as a competitive local exchange carrier in West Virginia on July 27, 1998. *In the Matter of FiberNet, L.L.C.*, Case No. 98-0431-T-CN (July 26, 1998).

<sup>2</sup> Public Notice, DA 98-1506, NSD-L-98-99, "Request by Bell Atlantic—West Virginia for Interim Relief under Section 706, or, in the Alternative, a LATA Boundary Modification" (released July 28, 1998). The petition itself is referred to herein as "Bell Atlantic Petition" and Bell Atlantic - West Virginia is referred to as "Bell Atlantic."

**1. Bell Atlantic Does Not Need the Relief It Seeks, Because West Virginia Is Not "A High Tech Island."**

Despite Bell Atlantic's attempts to portray West Virginia as cut off from the rest of the world with respect to high speed communications facilities, the facts show otherwise. FiberNet and its cable television affiliate, Capitol Cablecomm, repeatedly have attempted to alert state officials of FiberNet's capacity to meet the state's high speed needs. FiberNet has had in place since May 1, 1998 an OC-12 link to an interexchange carrier with DS-3 capacity over an OC-48 system out of the state in two directions, and connections to Internet backbone providers outside the state. FiberNet has also suggested to the State's Department of Administration that the company could offer point to point DS-1 and DS-3 facilities at a better rate than currently offered by Bell Atlantic.

FiberNet also has attempted to make known to state officials the existence and availability of fiber facilities in and around all the state offices in Charleston, over which the company is at present providing private video services. These facilities could be used for local carriage of broadband services, or linked to FiberNet's other facilities to supply transport to out-of-state destinations, such as an Internet access provider in Columbus, Ohio with which FiberNet is associated. Personnel from FiberNet contacted the State Board of Education located in Charleston, specifically seeking consideration to supply DS-1 Internet links. FiberNet also contacted local public broadcasting service officials in Charleston to be considered for the DS-3 ATM link which they seek. To date neither the education nor broadcasting officials appear to have considered FiberNet's offers for any of the above-identified facilities or services.

As for Bell Atlantic's identification of a purported "interLATA bandwidth famine" within West Virginia, the Commission should know that FiberNet is working to complete a fiber link between Morgantown and Charleston (which would allow access to out of state destinations from Morgantown) by partnering with non-traditional providers of high speed capacity. FiberNet believes its link will be completed by year's end at the latest, which appears to be just as timely as Bell Atlantic's undisclosed plan to meet this particular need. In short, Bell Atlantic is *not* the only carrier that has shown a commitment to making the investment necessary to bring broadband to West Virginia; FiberNet has and will continue to make such investments and deploy such facilities.

Further, it appears that Bell Atlantic has ignored Internet providers sited closer to the Clarksburg and Charleston LATAs than at least one terminus (Richmond) preferred by Bell Atlantic. FiberNet presently has an arrangement with an Internet access provider sited in Columbus, and FiberNet can offer a link to Bell Atlantic today from Charleston to Columbus for any Internet needs.

The Commission should also be aware that Bell Atlantic's self-imposed isolation extends to a delay in initiating collocation and interconnection negotiations with FiberNet. Anticipating CLEC authorization from the West Virginia PSC in midsummer 1998, FiberNet informally requested the commencement of collocation and interconnection negotiations with Bell Atlantic on June 5, 1998. To date Bell Atlantic has not even taken the preliminary step of assigning an Account Manager to FiberNet's request.

## **2. Bell Atlantic's Fiber "Crisis" Need Not Have Been.**

The Act permits Bell Atlantic to apply for interLATA authority upon a showing that its local exchange markets have been opened to competition.<sup>3</sup> To the best of FiberNet's knowledge, Bell Atlantic has not applied for such authority for West Virginia, perhaps owing to the fact that Bell Atlantic continues to resist competition in the state, as demonstrated by its unwillingness or inability to negotiate collocation or interconnection with FiberNet. Thus, Bell Atlantic's new-found interest in the telecommunications needs of West Virginia's students or economic welfare of adult West Virginians should be viewed with some skepticism.

## **CONCLUSION**

The state-wide "high tech island" Bell Atlantic portrays to the Commission is a fiction. The facts demonstrate that high-bandwidth fiber facilities are available in, through, and out of West Virginia. Bell Atlantic's narrow view of which companies can or should provide high speed services and facilities in, through, and out of West Virginia should not be seen as representative of other carriers' vision for West Virginia's digital present and future. Similarly, Bell Atlantic's reluctance to partner with other companies to link to Internet providers outside Bell Atlantic's region is not representative of other companies' attempts to provide West Virginians a seamless web of Internet access.

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<sup>3</sup> 47 U.S.C. § 271(c).

FiberNet has attempted to provide services and facilities to the State of West Virginia for several months which explicitly meet the needs identified in various affidavits attached to the Bell Atlantic petition. FiberNet has at present an Internet link from Charleston to Columbus, Ohio, and anticipates a further link back to Morgantown by year's end. Bell Atlantic has only identified Internet access providers within its region to meet its so-called "emergency" needs, overlooking closer and presently available options. Bell Atlantic could have deployed its own facilities to meet perceived needs under the Act, but failed to do so, and has failed to open the local market to competition as well. Bell Atlantic's claim that West Virginia suffers from a "fiber famine" is inaccurate and self-serving. Bell Atlantic's petition must be denied.

Respectfully submitted,

**FIBERNET, L.L.C.**

By: 

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Its Attorneys

Dated: August 10, 1998

## **CERTIFICATE OF SERVICE**

I, Connie M. Simmons, do hereby certify that a copy of the foregoing document was mailed first class mail, postage prepaid, this 10th day of August, 1998, to the following:

Honorable William Kennard, Chairman \*  
Federal Communications Commission  
1919 M Street, N.W., Room 814  
Washington, D.C. 20554

Commissioner Michael K. Powell \*  
Federal Communications Commission  
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**\* VIA HAND DELIVERY**